EMPLOYERS' RIGHTS IN TRADE UNIONIZATION DISPUTES

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Introduction

Over the years, the role of employers in unionization disputes has been a matter of great concern. The right of Employers to approach the Court in unionization disputes is often curtailed because of *locus standi* (right to sue). The reasoning for this is that employers ought not to interfere in the rights of employees to associate. Based on this, unionization disputes in Courts and Tribunals mostly occur between competing trade unions or trade unions and employees.

This article considers the rights of employers to wade into disputes, where the contention is the recognition of a trade union by an employer. It also discusses the employer's right to challenge the unionization process by trade unions, the jurisdictional scope of trade unions, and the exercise of the constitutional right to associate in trade unionization disputes.

Trade Unions

Labour unions, also commonly regarded as trade unions, are organizations formed by workers from related fields to work for the common good of their members. According to the Trade Unions Act[1], a Trade Union is a combination of workers or employers whose purpose is to regulate the terms and conditions of employment of workers. Trade Unions typically assist members with issues such as pay equity, a pleas-

1 The Trade Unions Act T14 LFN 2004

ant working environment, work hours, and other benefits, including the right to embark on industrial actions[2]. They represent a group of workers and usually serve as a link between management and workers.

Jurisdictional Scope Of Trade Unions

The jurisdictional scope of Trade Unions and membership of the Unions have their roots in the Trade Unions Act 2005 (as amended). Before the amendment of the Trade Unions Act, the jurisdictional scope and recognition of Trade Unions were decided by the National Industrial Court and Industrial Arbitration Panel. In some cases, official gazettes were issued to address recognition concerns of trade unions within an organization or a government agency.

The amendment to the Trade Unions Act created uniformity by laying down the jurisdictional scope of each Trade Union, both at the entry and senior staff levels, in Parts A and B of the Third Schedule to the Trade Union's Act 2005 (as Amended). Therefore, to determine whether the workers of a company fall within the jurisdictional scope of a trade union, recourse must be made to the Third Schedule of the Trade Unions Act 2005 (as Amended).

The provisions of the Third Schedule to the Trade Union's Act 2005 (as amended) provide that the scope of unionization in Nigeria is Industry based. In Food, Beverages, and Tobacco Senior Staff Association v. Royal Salt Limited & Another[3], the Court held that Unionization in Nigeria is industry-based, and as such, Food, Beverages, and Tobacco Senior Staff Association cannot unionize workers who are not in the food industry. The Court restated and affirmed this position in PERESSA v. SSACGOC[4], where it held that the right of a worker to decide which union to belong to is not absolute but must be exercised within the limits of the Trade Unions Act Cap. T14 LFN 2004.

The Constitutional Right To Associate

The fundamental right of every employee to associate or belong to a Trade Union is guaranteed under Section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) as follows:

> "Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union or any other association for the protection of his interest"

Notwithstanding the above express provision, the right to associate or

2 The Hon. Attorney General of Enugu State v. National Association of Government General Medical and Dental Practitioners [NAGGMDP] & Ors., Suit no. NIC/EN/16/201

3 (2009), 16 NLLR Pt. 43 PG 92

4 [2009] 14 NLR (Pt. 39) 306

belong to a Trade Union of choice is limited by Section 45(1) of the Constitution which says that the right in Section 40 of the Constitution may be limited in the interest of defense, public safety, public order, public morality, or public health or ***for the purpose of protecting the rights and freedom of other person (emphasis added).***

Therefore, the right to belong to a trade union is limited to the industry of operation of such Union and as such, the right of a worker/employer to decide which trade union to belong to must be exercised within the limits of the Trade Union Act (as amended). Voluntarism and the freedom to choose which union to belong to is restricted to the trade unions empowered to operate within a clearly defined jurisdictional scope.[5]

In explaining the rationale for the qualification, the Court held in NUPENG *v. MWUN*[6] that the need to streamline trade unions was because of the proliferation of trade unions and chaotic labor. This culminated in the restructuring exercise under Decrees 4 and 26 of 1996 where trade unions were restructured into named unions and their jurisdictional scope listed out in the Third Schedule at Parts A, B, and C to the Trade Unions Act.[7] The Trade Unions Amendment Act did not repeal, amend or substitute any of the provisions of the Third Schedule Parts A, B, and C of the Trade Unions Act. It is apt to state that employees at entry-level are considered automatic members of trade unions within the ambits of their employer's trade.[8] The jurisdictional scope of a trade union is determined by the articles of association or the statutory provisions that show the object for which the organization was created.

The business operations of an employer may also create a direction on the subject matter of the organization. The Courts, over the years, have maintained a consistent approach in situating employees within the appropriate Trade Union of their calling. In PERESSA V. SSACGOC[9], the National Industrial Court considered the issue of whether Precision, Electrical and Related Equipment Senior Staff Association (PERESSA) can unionize workers in the telecommunication and communications industry. The Court considered, amongst other things, Item 29 of Part B of the 3rd Schedule to the Trade Unions

5 SUIT NO: NICN/LA/49/2015 : UNION OF TIPPER & QUARRY EMPLOYERS OF NIGERIA V. THE INCORPORATED TRUSTEES OF LAGOS OGUN TIPPER WORKERS WELFARE ASSOCIATION OF NIGERIA (LOTWWAN) & ORS. See also NCSU v ASCSN (2004) 1 NLLR (PT 3) 429;

6 [2012] 28 NLLR (Pt. 80) 309

7 (TUA) Cap. T14 LFN 2004

8 The National Industrial Court has restated the law to the effect that unionization of junior staff is assumed given that the yardstick is eligibility; although the junior staff has the right to opt out of the trade union. This assumption of course does not apply to senior staff who by law must individually and in writing opt to join the applicable trade union. See **SUIT NO. NICN/ABJ/62/2021; Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Services Employees (AUPCTRE) V. Corporate Affairs Commission (CAC)**

9 [2009] 14 NLLR (Pt. 39) 306 at 340 B-D

Act and held that PERESSA falls within the Steel and Engineering Workers Union of Nigeria and not the provision of communications and telecommunications services. The Court concluded that it was unlawful for PERESSA to unionize workers in companies that provide communication and telecommunication services.

Similarly, in the National Union of Hotels and Personal Services Workers v. NUPENG[10], the Court held that the business for which Sodexho Nig. Ltd was established as contained in its Memorandum of Association is to carry on the business of hotel, restaurant, catering, etc. Although Nupeng had contended that the services were rendered within the Oil and Gas Sector, the Court found and held that the services rendered by Sodexho in the oil industry were related to catering services. Thus, the object of Sodexho falls within the jurisdictional scope of the National Union of Hotels and Personal Service Workers. Therefore, the appropriate union to unionize workers in Sodexho Nig. Ltd. was the National Union of Hotels and Personal Services Workers".

The Employers' Dilemma And Right To Sue

Despite the elaborate provisions of the law and the judicial interpretation, trade unions have continued to unionize workers that are not within their jurisdictional scope. This particularly raises concerns for employers, especially where the appropriate trade union to unionize the employees is not willing to challenge the process. In Nestoil v. Nupeng, Nestoil a company involved in construction instituted an action against the National Union of Petroleum and Natural Gas Workers (NUPENG) at the National Industrial Court, Lagos Division to determine whether the Trade Union had the jurisdiction to unionize its members who were in the construction industry. In their defence, Nupeng argued that the failure by Nestoil to recognize them as a Trade Union was illegal. The Court, *suo motu*, raised the issue of locus standi and questioned whether employers who are perceived as neutral parties with no right of action in unionization disputes are eligible to complain about wrong unionizations or unlawful attempts towards the recognition of trade unions. The Court held that the employer had no right or interest to request an employee for a joinder in a trade union dispute. A similar decision was handed down in Panya Anigboro V Sea Trucks Nigeria Ltd[11].

In the case of J.C. Udeozor & Sons Global Industries Limited & Ors v. National Union of Chemical Footwear, Rubber, Leather and Non-Metallic Products Employees[12], the Claimants

10 (2008) 13 NLLR 365

11 (1995)6NWLR(Pt.299)35

12 SUIT N0: NICN/BEN/14/2019 Delivered on 28TH SEPTEMBER 2020 (: https://www.nicnadr.gov.ng/judgement/details.php?id=4988) last accessed on 3 March 2022.

sought to circumvent this dilemma by including employees as co-claimants. The employer commenced the suit with some employees (who sought to represent other employees against the trade union) as a strategy to be clothed with the right standing to sue, thereby leaving the Trade Union without any grounds to challenge the representative action. However, the Court dismissed the claims for wrongful unionization as the same was not proved.

Recognition Of A Trade Union By An Employer

The recognition of a Trade Union by an employer is a duty imposed upon the employer by law[13]. That notwithstanding, an employer is required to verify the eligibility of the Trade Union to operate within their industry before the recognition of the trade union. Therefore, an employer can present the issue of eligibility before a Court for just determination.

The issue of recognition must be determined before the formation and deduction of check-off dues by the employer. It is only after the resolution of these two issues that an employer can be accused of meddling in union disputes. This position is anchored on the provisions of Section 17 of the Trade Unions Act, which mandates an employer to confirm/verify Registration and Recognition before paying check-off dues in the following terms:

Upon the registration and recognition of any of the trade unions specified in the Third Schedule to this Act, the employer shall-

(a) make a deduction from the wages of every worker who is a member of any of the trade unions for the purpose of paying contributions to the trade union so registered; and

(b) remit such deductions to the registered office of the trade union within a reasonable

13 Dangote Industries V NUFBTE (2009)14NLLR pt.37

period or such period as may be prescribed from time to time by the Registrar.

This avenue for challenging the excesses of trade unions was resolved by the Court of Appeal on the merits, in favor of the employer in the case of Nestoil v. Nupeng[14]. Nestoil appealed the decision of the Trial Court on the ground that the presiding Judge did not answer the question that was brought before it. Nupeng filed a preliminary objection over the Jurisdiction of the Court. The Court of Appeal faulted the trial Court for not inviting the parties to address it on the issue of locus standi. It held further that the workers in Nestoil Company are not part of the workers statutorily described as members of the Nupeng Union. See Ihunwo V Ihunwo & Ors (2013) LPELR-20084 (SC) ; and ADEGBESAN & ANOR V ILESANMI (2017) LPELR-42552(CA).

The Court of Appeal decision has set aside the decision of the National Industrial Court on this subject matter. After careful consideration of the relevant provisions of the law, the Court of Appeal found that the employees of Nestoil are not part of the workers statutorily described as members of NUPENG.

14 (2018) LPELR-50094(CA)

Conclusion

While the Courts tend to interpret the rights of employees to associate and belong to trade union of their choice as sacrosanct, it is our position that Section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) is not absolute but subject to the express provisions of Section 45 of the 1999 Constitution. The rights of association must be strictly interpreted within the confines of the Trade Unions Act and other relevant laws. The combined interpretation of the Constitution and the Trade Unions Act is that employers have a right to verify the eligibility of Trade Unions seeking to Unionise their members before recognition of such unions.

An employer is therefore entitled to challenge the unionization of their members in trade disputes. Any other previous postulation that regards employers as meddlesome interlopers in the affairs of Trade Unions have now limited application and the locus standi of employers to challenge or complain on issues of uninization is not outsted under the law.

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